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IN THE

# Supreme Court of the United States

October Term, 1979

No. 79-6108

EMMA ARMOUR, *et al.*,

*Appellants,*

v.

JACK P. NIX, *et al.*,

*Appellees.*

## ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

## MOTION TO AFFIRM BY CITY OF DECATUR BOARD OF EDUCATION

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## MOTION TO AFFIRM

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Appellee City of Decatur Board of Education, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, moves that the final judgment dated September 24, 1979, of the three-judge district court dismissing the above action be affirmed on the grounds that the decision of the court below is clearly correct and does not need further argument.

## STATEMENT

### 1. Introduction.

This is a direct appeal from the final judgment and decree entered on September 24, 1979, by a district court of three judges specially constituted pursuant to 28 U.S.C. § 2281 (the "district court") dismissing Appellants' complaint.

The State Board, Atlanta Board, DeKalb Board and Fulton Board and other Appellee Boards have also filed Motions to Affirm, and we refer the Court to those Motions and accompanying briefs for an overview of the entire case. This brief will focus primarily on the district court's dismissal of the case against the City of Decatur school system.

### 2. Proceedings Below.

Plaintiffs filed their original complaint on June 7, 1972, naming as defendants the State Superintendent of Schools and State Board of Education of the State of Georgia, as well as Fulton, DeKalb, Cobb, Clayton and Gwinnett Counties and the Cities of Atlanta, Decatur, Marietta and Buford. Douglas County was subsequently added as a defendant in this action. An Amended and Substituted Complaint was filed on September 30, 1975, in which Appellants attempted to mold their complaint around the language of this Court in *Milliken v. Bradley*, 418 U.S. 717 (1974).

After a bifurcated trial of the liability portion of this case, the City of Decatur school system, along with the school systems of Clayton County, Cobb County, Douglas County, Gwinnett County and the City of Marietta, were dismissed from the case, after the presentation of

Appellants' evidence, by order of the district court dated March 2, 1978. In its order, the three-judge district court concluded that Appellants had failed to make out a *prima facie* case against the City of Decatur and the six other moving defendants because of the failure of Appellants to show evidence of substantial constitutional violations having an interdistrict impact.

3. **Facts Relevant to Issues Presented.**

A. **The Parties.**

(1) **Appellants.** Appellants are black parents with school age children attending schools in the City of Atlanta school system. None of Appellants reside in the City of Decatur or have children attending school in the City of Decatur school system.

(2) **City of Decatur Board.** The City of Decatur school system, located within DeKalb County, Georgia, had an enrollment for the 1977-1978 school year of 3,051, with a racial composition of 75% black and 25% white (Decatur's Answers to Plaintiff's First Interrogatories, as supplemented on October 19, 1977). The school system operates seven elementary schools, one middle school and one high school, such that all students within the City of Decatur school system attend schools without regard to their race.

The school district lines for the school system are and always have been coterminous with the boundaries of the City of Decatur. Georgia Acts of 1889, Page 292. Although there have been a number of annexations by the City of Decatur, with concomitant changes in the district lines for the Decatur City school system, these changes all occurred over thirty years ago and were for non-racially motivated purposes (City of Decatur Motion for Sum-

mary Judgment, Affidavit of Robert Hudgins, paragraphs 2 to 17).

B. **School Evidence.**

The district court found that "[T]he Decatur Board of education is presently operating its school system under court order in *United States v. State of Georgia*, Civil Action No. 12972 (N.D. Ga., filed August 1, 1979)." March 2, 1978 Order, p. 26.

C. **Housing Evidence.**

The three-judge district court specifically found that there was no showing of "significant constitutional violations by *any* governmental body of the . . . [outlying counties and cities]." March 2, 1978 Order, page 25 (Emphasis added by court). In addition, the three-judge district court found that Appellants had failed to present evidence of substantial constitutional violations with interdistrict impact. March 2, 1978 Order, page 27.

## ARGUMENT

### I. THE SUPREME COURT HAS JURISDICTION OVER THIS DIRECT APPEAL FROM THE JUDGMENT OF A THREE-JUDGE DISTRICT COURT.

This issue is fully briefed in the Motion to Affirm and Brief filed by Appellee State Board. We incorporate the State Board's Brief, and refer the Court to it for a full discussion of the facts and authorities relevant to this issue.

## II. THE DECISION AND JUDGMENT OF THE THREE-JUDGE DISTRICT COURT IS CLEARLY CORRECT, AND SHOULD BE AFFIRMED WITHOUT FURTHER ARGUMENT.

In dismissing this action, the district court concluded:

> "Plaintiffs have failed to show any constitutional violation by the State of Georgia or any of its subdivisions, including defendant School Boards, which has had an interdistrict effect, so that the court would be justified in opposing an interdistrict remedy." September 24, 1979 Order, p. 33.

The district court's dismissal of this action as to all defendants is clearly correct in that Appellants have failed to show that there have been violations of their constitutionally protected rights in the sense of their right to attend racially balanced schools, and, assuming that such a right might exist, Appellants have failed to show any substantial constitutional violations of an interdistrict nature under *Milliken*. These issues and the authorities in this area have been extensively considered in the Motions to Affirm and supporting briefs filed by the State Board of Education, the Fulton and DeKalb County Boards of Education and by the Boards of Education of the City of Marietta, Clayton County, Cobb County, Douglas County and Gwinnett County. The City of Decatur Board incorporates those three briefs and asks that the Court consider their discussion of the facts and authorities on the issues herein.

## CONCLUSION

For the foregoing reasons, we respectfully submit that the Order and Judgment of the district court dismissing this action was clearly correct, and should be affirmed without further briefing on the merits or oral argument.

Respectfully submitted this _____ day of _____, 1980.

ZACHARY AND SEAGRAVES

By:_____

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